

REMARKS

Claims 1-26 are pending. Applicants respectively request reconsideration of claims 1-26 based on this Amendment.

ARGUMENTS

Before addressing the rejections in the present office action, it is important to understand the invention and the problem addressed. While convenience foods are in high demand to accommodate today's busy lifestyles, notably absent from this group are bread products. This is because bread products are intended to be consumed within a relatively short period of time or as frozen products which once thawed must also be consumed within a relatively short period of time. In seeking to address this problem the present invention provides a **fully baked** flatbread food product which can be stored for relatively long periods (up to 6 months) under ambient conditions. Specifically, the present invention teaches using **a corn syrup and glycerine combination** to increase the shelf stability of the fully baked bread products.

Rejection 1: Under 35 U.S.C. § 103(a)

The Examiner has rejected Claims 1-14 and 23-24 under 35 U.S.C. §103(a) as being unpatentable over Durst (U.S. Patent 4,582,711) in view of Kuechle et al. (U.S. Patent 6,436,458), Atwell (U.S. Patent 5,792,499), and Rudel (U.S. Patent 5,458,902).

The Applicant's assert the Examiner's rejection of Claims 1-14 and 23-24 is improper. The Federal Circuit has stated that it is necessary, in order to support a rejection of claims under §103(a) using a combination of references, that there be a teaching or suggestion in one or more of the cited references to combine the elements of the claimed invention. *In re Dow Chemical Co.*, 5 U.S.P.Q.2d 1529 at 1531-32 (Fed.Cir. 1988); *ACS Hospital Systems, Inc. v. Montefiore Hospital et al.*, 221 U.S.P.Q. 929 at 933 (Fed.Cir. 1984); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, , 220 U.S.P.Q. 303 at 311 (Fed.Cir. 1983). The mere fact that the prior art can be modified does not make the modification obvious, unless the prior art taught or

suggested the desirability of the modification. *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984).

A. References cited by the Examiner

The primary reference Durst discloses ready-to-eat baked goods that are reported to be shelf stable. While the reference does contain some of the ingredients found in the present invention, including glycerine, the reference does not teach the use of corn syrup in bread making. Specifically, the reference does not teach or suggest using **corn syrup or corn syrup and glycerine combinations** to increase the shelf stability of bread products.

Kuechle et al. discloses a **refrigerated scoopable dough** that is shelf stable (2 to 6 months). Kuechle is not directed to methods for increasing the storage stability of **baked** goods.

Atwell discloses a method for the increasing the storage stability of **refrigerated dough**. Specifically, Atwell discloses a method for reducing syringing in refrigerated dough compositions. Col. 2, lines 46-63. Atwell is not directed to methods for increasing the storage stability of **baked** goods.

Rudel discloses high protein-content bread products “having improved keeping properties, based upon grain flours having wheat protein content of 30 to 70% and containing low heat non-fat dry milk.” Col. 1, lines 19-22. Rudel also teaches adding a nutritive carbohydrate sweetener to the bread, which may include corn syrup. However, Rudel does not suggest any functionality with respect to the addition of corn syrup beyond that of a “sweetening agent.” Thus, Rudel does not teach or suggest that stability can be improved by the addition of the corn syrup. Moreover, Rudel does not teach or suggest the use of glycerin. Thus, Rudel cannot teach or suggest the **combination of glycerine and corn syrup** for any purpose, much less the purpose of extending shelf-life of the product.

B. The Present Invention

The present invention is directed to soft, fully baked flatbread which can be stored for relatively long periods (up to 6 months) under ambient conditions. Specifically, the present invention teaches using a corn syrup and glycerine combination to increase the shelf stability of bread products. The present invention can be eaten cold, warm, or hot (reheated) without further baking and without

becoming leathery, dry stale and/or tough. Thus, unlike most baked bread products which “toughen” or become leathery, stale or dry the present invention maintains its texture and taste for prolonged periods of storage. Further, the flatbread is packaged in a pouch, envelope, or the like, under inert gas conditions. Moreover, the flatbread product may be consumed directly from the package with or without further heating as desired by the consumer.

C. No Suggestion to Combine or Modify the References

As stated above, in order to support a rejection of claims under 35 U.S.C. §103(a), using a combination of references, it is not sufficient that the combination of references define the claimed invention. Rather, what is needed is a teaching or suggestion to combine elements to arrive at the invention found in one or more of the prior art references. None of the references the Examiner relies on contains any teaching or suggestion to combine the elements to arrive at the claimed invention. Therefore, the reliance on these references to sustain a rejection under § 103(a) is improper.

Durst does not teach or suggest using corn syrup or corn syrup and glycerine combination to increase the shelf stability of bread products. None of the other references cited by the Examiner can be properly combined with Durst to arrive at the present invention. Both Kuechle and Atwell disclose bread dough compositions not fully baked bread. As such neither teaches or suggests that corn syrup or corn syrup and glycerine could extend the shelf life of fully baked bread. Additionally, Rudel discloses bread products with improved keeping properties, based upon grain flours having wheat protein content of 30 to 70% and containing low heat non-fat dry milk. While Rudel teaches adding corn syrup as a sweetener to the bread, it does not teach or suggest any functionality with respect to the addition of corn syrup beyond that of a “sweetening agent.” Thus, Rudel does not link the improved keeping properties to the addition of the corn syrup. Since the references are not properly combinable to arrive at the present invention, Applicants respectfully request that this rejection be withdrawn.

Rejection 2: Under 35 U.S.C. § 103(a)

The Examiner has rejected Claims 15-22 and 25-26 under 35 U.S.C. §103(a) as being unpatentable over Durst (U.S. Patent 4,582,711) in view of Rudel (U.S. Patent 5,458,902), Kuechle et al. (U.S. Patent 6,436,458), Atwell (U.S. Patent 5,792,499), Synder (U.S. Patent 5,167,973) and Rozzano (U.S. Patent 5,695,798).

The Applicant's assert the Examiner's rejection of Claims 15-22 and 25-26 is improper. The Federal Circuit has stated that it is necessary, in order to support a rejection of claims under §103(a) using a combination of references, that there be a teaching or suggestion in one or more of the cited references to combine the elements of the claimed invention. *In re Dow Chemical Co.*, 5 U.S.P.Q.2d 1529 at 1531-32 (Fed.Cir. 1988); *ACS Hospital Systems, Inc. v. Montefiore Hospital et al.*, 221 U.S.P.Q. 929 at 933 (Fed.Cir. 1984); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 220 U.S.P.Q. 303 at 311 (Fed.Cir. 1983). The mere fact that the prior art can be modified does not make the modification obvious, unless the prior art taught or suggested the desirability of the modification. *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984).

The primary reference Durst, as well as the secondary references Rudel (U.S. Patent 5,458,902), Kuechle et al. (U.S. Patent 6,436,458), and Atwell (U.S. Patent 5,792,499), were applied in essentially the same manner as discussed above. The discussion of these references from above is hereby incorporated by reference. The newly cited secondary references (i.e., Rozzano (U.S. Patent 5,695,798) and Snyder (U.S. Patent 5,167,973)) do not correct the deficiencies of the primary reference and the secondary references as detailed above.

Rozzano discloses a compartmentalized, plastic food package including a container and sealed cover. However, the reference neither discloses use of such container in relation to bread products nor does it disclose a hermetically sealed tray that can extend the shelf life compartmentalized food products. Additionally the reference fails to disclose or suggest using of the package under refrigerated conditions while retaining satisfactory texture and chewability characteristics of a fully baked bread product.

Snyder discloses a plastic food container which stores both milk and breakfast cereal stored at room temperature. The reference does not describe using such

container in relation to fully baked bread products. Additionally the reference teaches away from the present invention because it describes "a self contained breakfast cereal and milk container that capable of compact and **non-refrigerated** storage." Col. 2, Lines 29-30. Therefore, Synder fails to disclose or suggest using the package under refrigerated conditions while retaining satisfactory texture and chewability characteristics of the baked bread products.

As detailed above, the present invention is not obvious over Durst, Rudel, Kuechle et al., Atwell, Synder and Rozzano because there is no suggestion to combine or modify the references. Those arguments from above are fully incorporated herein. The new secondary references are generally related to food containers and cannot correct the deficiencies of the other references.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully request that the Examiner allow pending claims 1-26, and pass the application to issue.

If the Examiner believes that a telephonic or personal interview would be helpful to terminate any issues which may remain in the prosecution of the Application, the Examiner is requested to telephone Applicants' attorney at the telephone number set forth herein below.

The Commissioner is hereby authorized to charge any additional fees which may be required in the Application to Deposit Account No. 06-1135.

Respectfully submitted

FITCH, EVEN, TABIN & FLANNERY

By: 

Richard A. Kaba
Registration No. 30,562

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120 South La Salle Street
Suite 1600
Chicago, IL 60603-3406
(312) 577-7000